

THE RIGHT TO LIFE

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A flood of gay lawsuits seeks to redefine family and parenthood

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Twenty-two years ago, patrons in an obscure Greenwich Village bar sparked the gay-rights movement by fighting back when police tried to arrest them.

The first gay-rights demand was to be left alone, to exist without being hassled. But today, gays are demanding far more — the very rights in every walk of life that their heterosexual counterparts take for granted.

The right to spend time with a child you helped raise. The right to dance with your lover at a neighborhood bar. The right to serve your country in the military. The right to marry the person you love. The right to have your partner and children covered by your employer's health plan. The right to have your domestic partner use your employee discount card.

All across the nation, gays are fighting for legal recognition and protection in the courts. This includes unprecedented efforts to expand the definitions of "family" and "parent."

"People are fed up, they're tired, they want things to change," says Patti Roberts, acting executive director of the National Center for Lesbian Rights in San Francisco. "They are feeling it's time for their rights to be had," she says of the rush of litigation involving gays.

In New York, two women wanted to have a family together. Each bore a child through artificial insemination and later separated. Now one is demanding the right to visit the boy she helped raise, even though she is not biologically related to him.

In California, an Eagle Scout who took his boyfriend to his high school prom was later told he couldn't be a Scout leader. Now he's in a Los Angeles court suing the Boy Scouts of America to let him be a Scout leader.

In Washington, D.C., two men who say they love each other and want to make that commitment legal filed a lawsuit against the District when they were told they couldn't marry.

In Minneapolis, three lesbians who work for the city sued because their domestic partners — unlike those of married city employees — are not covered by their medical plan.

In East Lansing, two gay students at Michigan State University, turned away by the local military recruiter, filed a complaint with the city, asking it to back up its provision against employment bias.

Congress and most state legislatures have resisted pressure to extend civil rights protection to gays. So courts have been left to face the challenge of applying laws in ways that deal with situations never envisioned by the laws' drafters. These cases often present complex and frustrating problems for judges, who preside over them with few cultural or legal guideposts.

In the '90s, gay legal experts say, their major court battles will include working to:

■ **Overturn the military's ban on homosexuals.** A number of gay soldiers claim they were sent to the Persian Gulf after declaring their sexual orientation. If this proves true, their fight to stay in the military may be bolstered by the Supreme Court's decision last year to order the Army to reinstate Sgt. Perry Watkins. He was drafted despite saying he was gay, only later to be discharged.

■ **Expand who qualifies as family in relation to employee health and survivor benefits.** American Telephone & Telegraph Co., for example, is being sued for not paying death benefits to an employee's lover and her children in *Rovira v. AT&T*.

■ **Allow gay partners to sue over "wrongful death" and "emotional distress,"** claiming loss of their relationship and economic support.

■ **Grant parental rights to a gay person whose partner is the biological or adoptive parent of a child.** Currently the "co-parent" has no legal rights, sparking lawsuits in cases where a relationship breakup or death leads to a custody battle.

"The problem is that our laws and institutions are still mired in the old traditional family of the husband, the wife and the kids," says Arthur Leonard, a professor at New York Law School. "We have to expand the way the law recognizes and defines families."

"All of these cases are very new," adds Paula L. Ettelbrick, legal director of Lambda Legal Defense and Education Fund, the oldest and largest of several gay-rights legal groups in the country. "The legal system is extremely sluggish, so it takes forever to get these cases through the courts."

Steamroller effect

Paula Ettelbrick is awaiting a ruling in one of the most-watched gay family cases in the nation: *Alison D. v. Virginia M.*

In this case, New York State's highest court, the Court of Appeals, is weighing whether visitation rights should be considered for a woman, "Alison D.," who helped raise the son of her now estranged lover.

"What is important to a child is not the parent's biology or sexual orientation," argues Ettelbrick, attorney for "Alison D.," "but the love, nurturing and care that a person provides."

But the attorney for the child's mother argues that the law makes clear that it is a parent's fundamental right to determine who associates with his or her child. Attorney Anthony G. Maccarini warned of a "steamroller effect," echoing an argument heard in the California case that granting such visitation rights could leave a parent prey to a host of visitation demands.

Two weeks ago, a lower court in California in a 3-0 ruling rejected a similar bid by a lesbian to see her former partner's two children, stating: "Expanding the definition of a 'parent' in the manner advocated . . . could expose other natural parents to litigation brought by child-care providers, successive sets of stepparents or other close friends of the family."

But gay legal advocates are more hopeful in the New York case, because the state's Court of Appeals in 1989 said the term "family" includes gays with respect to rent-control laws.

The court said eviction of a gay man from his deceased lover's apartment should not rest on "fictitious legal distinctions or genetic history," but instead on "the reality of family life," which includes "two adult lifetime partners whose relationship is long-term and characterized by an emotional and financial commitment and interdependence."

That groundbreaking ruling, *Braschi v. Stahl Associates Co.*, was the first time a state's highest court determined that a gay couple can constitute a family, and it is the most significant victory for gay legal advocates in terms of family law. While the court restricted the ruling to a rent-controlled apartment, it created the type of precedent that gay-legal advocates can cite in a variety of other situations.

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"What they are trying to do is remove all legal barriers to viewing homosexual relationships as inferior to marriage," says Jordan Lorence, an attorney at Concerned Women for America, a conservative women's group based in Washington that works actively against gay rights.

"In 10 years, unless there is a massive shift in opinion, I think they are largely going to be successful in that."

"The number of legal actions being pursued by homosexuals is staggering," Rep. William Dannemeyer, R-Calif., one of Capitol Hill's most vocal critics of homosexuality, has noted.

"They are clearly among the most litigious people in the country," Dannemeyer contends in his critique of the gay-rights movement, *Shadow in the Land*, "and they will go back into court time and time again when they suffer setbacks on such issues as state sodomy laws."

Attitudes in flux

The surge in cases involving gays occurs at a time when the nation's attitudes about homosexuality are in flux. The Gallup Organization found a growing tolerance of homosexuality in recent surveys, yet sociologists and psychologists say long-held myths about gays persist.

Rhonda R. Rivera, a law professor at Ohio State University and former assistant dean at University of Michigan Law School who has written extensively on gay legal issues, says gays are still often viewed in courtrooms as "inherently immoral, criminal, psychotic, molesters and recruiters."

Bruce Skaug, a prosecutor in Boise, Idaho, says he felt frustrated after trying a criminal case recently involving a lesbian couple.

Skaug was prosecuting a woman who admitted stabbing her lover with a jackknife in a domestic dispute. It was a different side of life for mainstream Boise: The woman claimed she was a battered spouse who finally cracked, stabbing her abuser. The jury acquitted her Feb. 1, for reasons Skaug contends had more to do with the looks of the two women than the facts of the case.

"The jurors could not climb over their disgust with the gay lifestyle to listen fairly to the evidence," said Skaug, who interviewed jurors after the trial. Skaug said several jurors told him they didn't like the woman who was stabbed "because she was a masculine female."

Lynne Zarek, who has a 4-inch scar on her back from the stabbing, says the defense played to the jury's general uneasiness by portraying her as an "oversized butch."

And those attitudes aren't restricted to the jury box. Gay legal advocates have been disturbed by anti-gay sentiments voiced by judges presiding over cases that involve gay people.

On March 9, for example, in the highest-profile challenge to the military's ban on homosexuals, a Federal District Court judge used the word "homo" to refer to a gay man who is challenging the constitutionality of his dismissal from the Naval Academy. Attorneys for Joseph C. Steffan have asked Judge Oliver Gasch to remove himself from the case.

A similar instance occurred in Michigan last July, when Lenawee County Judge Kenneth G. Glaser Jr. said before sentencing a gay man for having sex in a park: "I'm not a guy that believes that homosexuality is an acceptable alternative lifestyle. I think it is a serious sickness." After a complaint by an attorney, Glaser offered to exclude himself from subsequent alleged gay-sex cases stemming from an undercover police investigation at Adrian's Island Park.

The murder of 'queers'

But the incident that drew the most publicity occurred in 1988 in Dallas, when State District Court Judge Jack Hampton was quoted as calling two murder victims "queers" and saying he gave their killer a lighter sentence because he assumed the victims were "cruising . . . for teen-age boys."

"Homophobia is ingrained into the system because it's ingrained into the population," says Los Angeles attorney Thomas F. Coleman, executive director of the Family Diversity Project, which educates courts and businesses about nontraditional families. "And it's ingrained into the judges and the defense attorneys and prosecutors and everybody else."

Coleman quips, "In this country you have a right to a jury of your peers, and that means a gay person is unfortunately entitled to homophobic juries."

"I know that my first job is to find a way to educate the judge about my client and to make sure that . . . I try to break down any stereotypes or preconceptions he or she may have," says Lambda Defense attorney Ettelbrick. "Because I'm never going to win the case otherwise."

But Paul Cameron of the Family Research Institute, an anti-gay group in Virginia that studies human sexuality, attributes gay successes in court to "a basic flaw" in the American character that "we can't say no to a persistent talker."

"In the kind of chicken society and media-driven society such as we live in, who screams the loudest tells the greatest truth," said Cameron.

Yet to date, gays have generally fared poorly in the courts, particularly at the federal level. But the surge in discrimination complaints and lawsuits has become an effective tactic to pressure private businesses to voluntarily adopt policies that benefit gays.

Last week, for example, Motefiore Medical Center, a Bronx hospital, responded to a complaint by a lesbian doctor by announcing it would extend health benefits to domestic partners of its gay employees. It is the largest private employer in the nation to do so.

Los Angeles attorney Coleman says many of the court cases won't be won, "but they will be used as focal points to show the discrimination, to underscore, to mobilize, to educate, to shame the employers into voluntary compliance."

Legislative changes

Gay legal advocates say the biggest changes will come not through the courts but through the state legislatures and local governmental bodies that provide protection, recognition and rights to gays.

The legal push is expected to be helped, for example, by the decision of several cities to allow gay and non-married heterosexual couples to register as "domestic partners."

Some of the cities have extended health benefits to the domestic partners of city employees, including Berkeley, Calif., and as of March 1, East Lansing. City Manager Tom Dority said East Lansing's move "recognizes the present reality of family relationships" and was decided "solely as a matter of equity."

Ironically, gay legal advocates attribute much of the momentum for their push to a stinging defeat: the Supreme Court's *Bowers v. Hardwick* decision in 1986, which upheld states' rights to criminalize homosexual sodomy.

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"It has been an awakening for the gay and lesbian community — that we can't get our rights imposed from above on high, that we have to work for them, to build a foundation," says Los Angeles attorney Coleman.

"The *Hardwick* decision really threw a shock into a lot of gay people who were very complacent about their rights, people who assumed that sodomy laws were so archaic that the Supreme Court could not possibly uphold them against constitutional attack," concurs law professor Leonard.

Twenty-five states and the District of Columbia have sodomy laws. (In Michigan, a Wayne County judge last year ruled the state's sodomy law unconstitutional; but, because the state did not appeal, the ruling's impact is restricted to the county.) Gay legal groups are trying to chip away at these states one by one.

But today, the *Hardwick* decision underscores that the legal status of gays remains precarious, not at all unlike that of their activist ancestors at the Stonewall Inn in Greenwich Village, who rioted in the summer of 1969.

"Sodomy laws still form such a cornerstone of discrimination against us," says Lambda's Ettelbrick. "Until we get rid of these laws that call us criminals, it really is difficult to move forward."

Gay legal advocates

Michigan Organization for Human Rights: Based in Lansing; works for gay rights through the legal system (517-887-2605).

There are four national nonprofit gay legal advocacy groups:

Lambda Legal Defense and Education Fund: Founded in 1973; has offices in New York and Los Angeles. (Headquarters: 666 Broadway, 12th Floor; New York, N.Y. 10012; 212-995-8585)

National Center for Lesbian Rights: Formed as the Lesbian Rights Project in 1977; has office in San Francisco. (1663 Mission St., 5th Floor; San Francisco, Calif. 94103; 415-621-0674)

National Gay Rights Advocates: Founded in 1978; has offices in San Francisco and West Hollywood, Calif. (Headquarters: 540 Castro St.; San Francisco, Calif., 94111; 415-863-3624)

Lesbian and Gay Rights Project of the American Civil Liberties Union Foundation: Founded in 1986; headquarters in New York. (132 West 43 St.; New York, N.Y. 10036; 212-944-9800)



Lynne Zarek carries a knife scar and the dislike of an Idaho jury.